

**UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

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)	
IN RE:)	
)	
)	
Erica McEachin Wicks)	Bankruptcy No. 15-30851
)	Chapter 13
)	
Debtor)	
)	
)	
Erica McEachin Wicks)	
)	Adversary Number:
)	
Plaintiff)	
)	
)	
vs.)	COMPLAINT
Wells Fargo Home Mortgage)	TO DETERMINE THE VALIDITY
)	AND EXTENT OF LIEN OF
)	Wells Fargo Home Mortgage
Defendant)	
)	
)	

NOW COMES the plaintiff who, complaining of the defendant, alleges and says as follows:

1. The Plaintiff is a resident of Mecklenburg County, North Carolina, and is the Debtor who filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code on May 28, 2015, which bears file number 15-30851.

2. The defendant, is a business which is engaged in the business of lending money.
3. This is an adversary proceeding under Rule 7001 of the Federal Rules of Bankruptcy Procedure related to the above referenced bankruptcy case now pending before this court, and in this adversary proceeding, the plaintiff seeks to have the validity and extent of the lien claimed by the defendant on property owned by the Plaintiff determined.
4. Generally, this court has jurisdiction over the subject matter of this adversary proceeding pursuant to 28 USC 1334 in that this is a proceeding arising out of Title 11 (11 USC Section 101, et. Seq.) or arising in or related to a case under Title 11 because it involves the enforcement of rights granted by the United States Bankruptcy Code and because of the order entered by the judges of the United States Bankruptcy Code and because of the order entered by the judges of the United States District Court for the Western District of North Carolina on July 30, 1994, ("the Referral Order") and pursuant to the Bankruptcy Amendment and Federal Judgeship Act of 1994 referring to this court all core proceedings arising under Title 11 or arising in a case under Title 11 and all proceedings which are non-core proceedings but which are otherwise related to a case under Title 11.
5. Venue for this adversary proceeding is properly with this court pursuant to 28 USC 1409.
6. Specifically, this court has jurisdiction over this adversary proceeding pursuant to 28 USC 1334, 28 USC 157(b)(2) and the Referral Order because this is a core proceeding as defined in 28 USC 157 (b) (2) in that it concerns a request to determine the secured status of a claim under 11 USC 506. Pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure, the plaintiff has consented to the entry of a dispositive judgment in this adversary proceeding by the Bankruptcy Court.

FACTS

7. On May 28, 2015, the plaintiff filed for relief under Chapter 13 of the United States Bankruptcy Code, as above noted.
8. The defendant was listed as a creditor of the plaintiff and received notice of the filing of the Chapter 13 petition by the plaintiff.
9. The defendant was owed a debt in the amount of approximately \$23,300.00 for a HELOC on real property located at 8109 Weeping Fig Lane, Charlotte NC 28215 which was secured by a HELOC on real

property known as 8109 Weeping Fig Lane, Charlotte, North Carolina 28215, owned by plaintiff in Mecklenburg County, North Carolina; however, this lien has been forgiven by the defendant and the lien, if not already, is void and no longer exists.

10. The Plaintiff also owes Wells Fargo Home Mortgage as a first mortgage approximately \$130,303.00 on a note secured by a Deed of Trust on the same real property which is recorded in the Mecklenburg County Registry.

CLAIM FOR RELIEF

11. Since the defendant has forgiven the debt, this HELOC should be canceled and considered void upon the completion and discharge by the plaintiff of her Chapter 13 Plan.

Wherefore, the plaintiff prays that the court enter an order which determines that the HELOC, held by the defendant, has no value. The plaintiff further prays that the court order on the HELOC held by the defendant be canceled of record upon the plaintiff being granted a discharge herein.

Dated: September 27, 2018

SCHWILM LAW FIRM, P.L.L.C.

By: /s/ C. Lee Schwilm
C. Lee Schwilm
7520 E. Independence Blvd,
Suite 260
Charlotte, North Carolina 28227
Telephone: 704/567-5252
NC Bar No. 24507

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this date served the parties to the foregoing Adversary Proceeding by electronic notification of any registered CM/ECF user, or by depositing a copy thereof in the custody of the United States Mail, First Class postage prepaid, addressed to:

Mr. Warren L. Tadlock
Chapter 13 Trustee
PO Box 30097
Charlotte, North Carolina 28230-0097

Bankruptcy Administrator
402 West Trade Street, Suite 200
Charlotte, North Carolina 28202-1669

Wells Fargo Home Mortgage
PO Box 11758
Newark, New Jersey 07101

Erica McEachin Wicks
8109 Weeping Fig Lane
Charlotte, North Carolina 28215

This the 27th day of September, 2018.

SCHWILM LAW FIRM, P.L.L.C.

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